

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting )  
Investigation on the Commission's )  
own motion into the operations and )  
practices of William Michael Gavin, )  
an individual doing business as )  
Affordable Apartment Movers, )  
Respondent. )  
\_\_\_\_\_ )

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**NOVEMBER 29, 2001**  
**SAN FRANCISCO OFFICE**  
**I.01-11-037**

**ORDER INSTITUTING INVESTIGATION**

The California Public Utilities Commission [Commission] is the agency responsible for regulation of intrastate transportation of used household goods, personal effects and furniture pursuant to the California Constitution, (Article XII), the Household Goods Carriers Act (Public Utilities Code Sections 5101, et seq.), the Commission's Maximum Rate Tariff 4 [MAX 4], and Commission General Orders [G.O.'s] 100-M, 136-C, 139-A, 142, and others. These statutes and regulations require, among other things, that household goods carriers: operate only in a responsible manner in the public interest; procure, continue in effect, and maintain on file adequate proof of public liability/property damage, cargo, and workers' compensation insurance; and observe rules and regulations governing the acknowledgement and handling of claims for loss and damage, issuing of estimates, execution and issuance of documents, training and supervision of employees, maintenance of equipment and facilities, and rules pertaining to rates and charges. The California Public Utilities Commission is the primary agency responsible for enforcement of these and other statutes and regulations governing household goods carriers. These other statutes and regulations include general consumer protection and public safety provisions.

Consumer Services Division investigators (Staff) advise us, through

declarations supporting the issuance of this investigatory proceeding, that it has investigated the business practices of William M. Gavin, an individual doing business as Affordable Apartment Movers, [AAM], T-187,559, who operates a moving service in Ventura. Staff's investigation of AAM found many alleged violations of the Household Goods Carriers Act, and Commission rules and regulations. During the years 2000 and 2001 to date, staff received ten complaints from AAM's customers of poor service, failure to respond to their claims for loss or damage, and an overcharge from a verbal estimate by AAM in violation of MAX 4 Rules. In September 2001 CSD received five additional consumer complaints which had initially been filed with the Better Business Bureau and the Fraud Division of the District Attorney's Office in Ventura County. Staff says it reviewed these new complaints and found they raised similar MAX 4 issues as noted in earlier complaints received by the Commission.

### **LICENSE HISTORY**

On May 22, 1996, AAM applied to the Commission for authority to operate within California as a household goods moving carrier. AAM's current business address is 2646 Palma Drive #305, Ventura, CA 93003. William Michael Gavin is the "Qualifying Employee," the person of record who has the knowledge and ability to engage in business as a household goods carrier. On July 22, 1996 a household goods carrier permit was issued to AAM under File No. T-187,559.

### **THE INVESTIGATION**

The Staff says that it opened its investigation into AAM primarily in response to customer complaints and allegations received by the Consumer Services Division. The complainants alleged AAM failed to respond to their claims for loss or damage. The staff's investigation disclosed another customer complaint which alleged AAM assessed charges in excess of a verbal estimate it had quoted to the customer for the move. Also, AAM failed to respond to CSD staff inquiries concerning the disposition of

customer complaints. In addition, Staff noted extended periods of insurance and operating authority lapses by the carrier. The carrier failed to maintain evidence of adequate public liability insurance coverage on file with the Commission for ninety three (93) days in 1999 and 2000. During the period July 17, 2000 through February 14, 2001, the carrier's permit was under suspension or revocation for 185 days. AAM's permit was suspended on July 17, 2000 (delinquent fees) and reinstated August 10, 2000. The permit was again suspended on September 6, 2000 (liability insurance), October 16, 2000 (fees) and subsequently revoked on November 30, 2000 for failure to remit fees to the commission. AAM's permit was not reinstated until February 14, 2001. AAM continued to advertise its moving services and to conduct operations as a household goods carrier without a permit in force during these extended periods. Following is a summary of staff's allegations.

#### Inspection of Documents

Staff's review of thirteen shipments disclosed a number of improperly documented moves in violation of MAX 4 Rules. Deficiencies found include: (1) no Not To Exceed Price or an unreasonably high Not To Exceed Price; (2) failure to record total hours charged on the time bar; and (3) failure to show points of origin and destination. (Staff Report, Exhibit 5) Nine (9) shipping documents reviewed failed to contain the Not To Exceed Price. The Not To Exceed Price is an important consumer protection rule pertaining to maximum charges which may be assessed under MAX 4.

#### Better Business Bureau/Court Records

Staff found 4 complaints on file with the San Luis Obispo, Santa Barbara and Ventura Tri-Counties Office of the Better Business Bureau [BBB] in year(s) 2000 and 2001 to date. These complaints involved an alleged theft, failure to resolve a damage claim, and an overcharge. Staff obtained the BBB report relating to AAM which states, in part, "Based on our standards, we rate this company as having an

unsatisfactory business record due to unanswered complaints.” Staff noted a complaint of record in the Superior Court and the Small Claims Court in Ventura County. The 2000 Small Claims Court case of Andy and Melissa Green v. AAM cited loss and damage to furniture. The Superior Court entered a judgment of \$ 3,048 for Plaintiff on July 3, 2000. Despite assertions by AAM to the contrary, according to the Greens and records of the court, this judgment has not been paid.

#### Complaints Submitted to the Commission

The records of the Consumer Services Division disclosed six complaints submitted against AAM. These complaints included allegations of loss and damage to goods and an overcharge. Consumers complained of damaged items; poor service, the failure of AAM to respond to their claims despite repeated inquiries; an overcharge from the price quoted in a verbal estimate; a failure to state a Not To Exceed price as required by MAX 4 rules. These and other allegations are detailed further in staff’s report in support of issuance of this investigatory proceeding.

#### **Fitness, Section 5135 PUC**

#### **DISCUSSION**

After the issuance of operating authority, the Commission exercises continuing oversight of the carrier's fitness. Public Utilities Code Section 5285 authorizes the Commission, upon complaint or on the Commission's own initiative, after notice and opportunity to be heard, to suspend, change, or revoke a permit for failure of the carrier to comply with any of the provisions of the "Household Goods Carriers Act" or with any order, rule, or regulation of the Commission or with any term, condition, or limitation of the permit. Section 5139 gives the Commission power to establish rules for the performance of any service of the character furnished or supplied by household goods carriers. Section 5135 of the Public Utilities Code (PUC) provides, in part, that the commission may refuse to issue a permit if it is shown that an applicant or partner has

committed any act constituting dishonesty or fraud, or committed any act which, committed by a permit holder, and such conduct, if proven, would be grounds for suspension or revocation of the permit.

MAX 4 (Item 128) requires the carrier to properly and timely execute prescribed documents containing specified information so that each is signed by carrier and shipper prior to commencement of any service. These documents, referred to collectively herein as "contracts", are to contain such information as the scope of service to be provided, the rates and/or charges for those services, information regarding insurance and valuation, number and names of drivers and helpers, equipment to be provided, and rights and obligations of carrier and shipper. Under MAX 4, this "Agreement For Service" is to be provided to the shipper, where possible, no less than three days prior to the date of the move. The Agreement For Service is also to contain a "Not To Exceed Price". All of these provisions are intended to be a further guarantee that the shipper has an opportunity to be fully informed before relinquishing to the carrier their most personal and valuable possessions. Staff's report alleges that AAM failed to include the Not To Exceed Price in 9 of 17 AAM shipment documents examined. Two of the freight bills examined contained an unreasonably high Not To Exceed Price of \$ 80,000 (far out of proportion to the extent of services).

MAX 4 (Item 108) contains rules governing the issuance of estimates. Paramount among these requirements are that all estimates shall be in writing upon prescribed forms, and shall be based upon visual inspection of the goods to be moved. The Tariff provides for a maximum allowable charge for estimated shipments. Staff states it received an overcharge complaint from a customer regarding the issuance of a verbal estimate without visual inspection.

MAX 4 (Item 132) requires carriers to properly execute and provide to the shipper a Freight Bill upon prescribed forms, and containing specified information about the shipment, services provided and their rates and charges, units of measurement, helpers and packers, signatures of carrier, and the "Not To Exceed Price". Also required, under

this Item and Item 36 of the MAX 4 Tariff, is a legible record of all starting and ending times for each phase of service: packing, loading, driving, and unloading, and a record of deductions in time, if any. Staff's report alleges finding some Freight Bills and other shipping documents which failed to meet this requirement.

MAX 4 (Item 92) also prescribes rules governing the handling of claims for loss or damage. Claims must be filed in writing and must meet the minimum filing requirements contained in Item 92, paragraph 2. Upon receipt of such a claim, carriers are required to acknowledge receipt to the claimant, in writing, within thirty [30] days. Carriers are further required, where possible, to pay, decline to pay, or make a firm compromise settlement offer in writing within 60 days, or to advise the claimant, in writing, the status of the claim and reasons for the delay. Four consumers state that AAM failed to respond to their claims despite repeated inquiries. AAM also failed to respond to inquiries from the staff regarding the status of these claims.

We place tremendous trust in household goods carriers in granting them operating authority, a trust equaled by that of our citizens who tender their most personal and treasured belongings to movers. The alleged pattern of violations is serious. After the issuance of permits, the Commission exercises continuing oversight of the fitness of household goods carriers to hold them. One of the fundamental elements of such fitness is the safekeeping of property entrusted to the carrier's possession.

The respondent should recognize that CSD's allegations, which occurred during the period July 1, 1999 to date, are very serious and, if substantiated through hearing, constitute grounds for revocation of the respondents' operating authority and/or other appropriate sanctions and remedies.

**IT IS ORDERED** that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of the respondent, William Michael Gavin, an individual doing business as Affordable Apartment Movers.
2. A public hearing on this matter shall be held before an Administrative Law

Judge (ALJ) at a time and date to be set at the prehearing conference. At the hearing, the respondent may contest the staff's allegations that AAM has:

- a) Violated section 5286 of the Public Utilities Code by conducting operations as a household goods carrier after the suspension and revocation of its permit issued by the Commission authorizing such operations;  
(Counts: 10; Staff Report Page 20, Exhibit 20.) Dates:  
Count 1, December 11, 2000, Freight Bill No. 02758  
Count 2, December 15, 2000, Freight Bill No. 02783  
Count 3, December 19, 2000, Freight Bill No. 02766  
Count 4, December 20, 2000, Freight Bill No. 02764  
Count 5, December 26, 2000, Freight Bill No. 02814  
Count 6, December 28, 2000, Freight Bill No. 02817  
Count 7, December 29, 2000, Freight Bill No. 02797  
Count 8, January 22, 2001, Freight Bill No. 02890  
Count 9, January 29, 2001, Freight Bill No. 02942  
Count 10, January 30, 2001, Freight Bill No. 02967
- b) Violated section 5139 of the Public Utilities Code, and Item 92 of MAX 4 by failing to timely process claims for loss or damage;  
(Counts: 5, Staff Report Page 11, Exhibits 8, 9, 10, 11, Supplemental Staff Report, Exhibit 26) Dates:  
Count 1, November 7, 2000, Exhibit 8  
Parties: Linda Mulloy and AAM  
Count 2, January 2, 2001, Exhibit 9  
Parties: Joyce Lieberman and AAM  
Count 3, February 13, 2001, Exhibit 10  
Parties: Nina Anderson and AAM  
Count 4, December 12, 2000, Exhibit 11  
Parties: Andy, Melissa Green and AAM  
Count 5, October 20, 2001, Exhibit 26  
Parties: Don Driscoll and AAM  
Count 6, October 31, 2001, Exhibit 27  
Parties: John Eibl and AAM

- c) Violated section 5139 of the Public Utilities Code, and Items 128 and 132 of MAX 4 by failing to show required information, including a Not To Exceed Price on its shipping documents, or showing an unreasonable Not To Exceed Price of \$ 80,000 which had no relation to services actually provided;  
 (Counts 13; Staff Report Page 9, Exhibit 5, Supplemental Staff Report, Exhibit 25.) Dates:  
 Count 1, December 11, 2000, Freight Bill No. 02758  
 Count 2, December 15, 2000, Freight Bill No. 02783  
 Count 3, December 15, 2000, Freight Bill No. 02762  
 Count 4, December 19, 2000, Freight Bill No. 02766  
 Count 5, December 20, 2000, Freight Bill No. 02764  
 Count 6, December 26, 2000, Freight Bill No. 02814  
 Count 7, December 28, 2000, Freight Bill No. 02817  
 Count 8, December 29, 2000, Freight Bill No. 028\_\_\_  
 Count 9, January 29, 2001, Freight Bill No. 02942  
 Count 10, July 6, 2000, Freight Bill No. 01764  
 Count 11, August 9, 2000, Freight Bill No. 01962  
 Count 12, January 31, 2001, Freight Bill No. 02980  
 Count 13, May 19, 2001, Unnumbered Freight Bill  
 Parties: Susan Janovici and AAM  
 Count 14, September 21, 2001, Exhibit 27  
 Parties: John Eibl and AAM
- d) Violated section 5245 of the Public Utilities Code by giving a verbal estimate not in writing and assessing charges in excess of the price quoted;  
 (Counts 2: Staff Report Page 16, Exhibit 12, Supplemental Staff Report, Exhibit 26) Dates:  
 Count 1, April 15, 2001, Exhibit 12  
 Parties: Manya Gevurtz and AAM  
 Count 2, October 20, 2001, Exhibit 26  
 Parties: Don Driscoll and AAM  
 Count 3, September 10, 2001, Exhibit 27  
 Parties: John Eibl and AAM
- e) Violated section 5135 of the Public Utilities Code, by failing to comply with a lawful order of the court;  
 (Count 1: Staff Report Pages 15-16, Exhibit 11) Date:  
 Count 1, July 3, 2000, Exhibit 12



Parties: Andy Green, Melissa green and AAM

- f) Violated section 5139 of the Public Utilities Code, and General Order 100-M, by failing to maintain evidence of adequate public liability insurance on file and in effect with the Commission;  
(Counts: 93, Staff Report Pages 3,6, Exhibit 2A) Dates:  
July 15 through July 31, 1999, Exhibit 2A  
September 2, 2000 through November 19, 2000, Exhibit 2A
- g) Violated section 5139 of the Public Utilities Code, and Items 36 and 128(5) of MAX 4 by collecting charges in excess of those based upon rates quoted in the Agreement, and failing to refund such overcharges to the debtor within ten (10) days of collection;  
(Counts: 3, Supplemental Staff Report, Exhibits 21, 23, 25) Dates:  
Count 1, September 7, 2000, Exhibit 21  
Parties: Diane Katz and AAM  
Count 2, December 28, 2000, Exhibit 23  
Parties: Florence Hartmann and AAM  
Count 3, May 19, 2001, Exhibit 25  
Parties: Susan Janovici and AAM

The respondent is placed on notice that he may be fined for the above listed violations to the extent provided in the Household Goods Carriers Act, sections 5101 et seq. of the Public Utilities Code, (up to \$20,000 per violation) and/or that his permit may be suspended or revoked.

2. During the pendency of this investigation, it is ordered that Respondent William Michael Gavin dba Affordable Apartment Movers, shall cease and desist from any violations of the Household Goods Carriers Act, including Maximum Rate Tariff 4 and General Order 142.

3. The Consumer Services Division staff, if it elects to do so, may present additional evidence beyond that described in the declaration issued with this order (which comprises the staff's direct prepared testimony) either by testimony or through documentation, bearing on the operations of the respondent and his treatment of shippers. The additional evidence may be to show whether improper carrier conduct continued after

the issuance of the order, which could have significant bearing on the type and level of sanctions which could be appropriate. The respondent shall advise CSD how many, if any, shipper witnesses he wishes to cross examine at any evidentiary hearing, so arrangements can be made and any hearing scheduled in a location to minimize inconvenience to shipper witnesses.

4. Scoping Information: This paragraph suffices for the “preliminary scoping memo” required by Rule 6(c). This enforcement proceeding is adjudicatory, and, absent settlement between staff and the respondent, will be set for evidentiary hearing. A hearing may also be held on any settlement for the purpose of enabling parties to justify that it is in the public interest or to answer questions from the ALJ about settlement terms. A prehearing conference will be scheduled and held within 40 days and hearings will be held as soon as practicable thereafter. Objections to the OII may be filed but must be confined to jurisdictional issues which could nullify any eventual Commission order on the merits of the issues about violations of statutes, rules, regulations or orders.

The Executive Director shall cause a copy of this order and the staff declaration to be personally served upon respondent, William Michael Gavin dba Affordable Apartment Movers, 2646 Palma Drive #305, Ventura, CA 93003.

This order is effective today.

Dated November 29, 2001, at San Francisco, California.

LORETTA LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY BROWN  
Commissioners